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Social Commentary: Not all victims of rape will be recognised as such in the eyes of the law

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Abstract

This social commentary discusses the contemporary stance of the Chinese government and Chinese society on the issue of marital rape in China. I have focused on this issue from a feminist perspective and the discussion is based mainly on my observations which are based on ideas from a selection of academic readings. When I came to New Zealand to take gender studies courses, I first understood marital rape as a form crime. After this I was able to understand that the marital rape exemption is a reflection of patriarchal legislative system and socio-cultural mores of contemporary Chinese society.

Keywords: China, domestic violence, marital rape, violence, women, sexual violence

Introduction

According to Encyclopedia Dictionary on Roman Law, the word rape originally derived from the Latin verb "*rapere*", which means "to seize or take by force" (p.667-768). Rape can be defined as a crime in the criminal statutes of most countries and the criminalization of rape under international law (Abegunde, 2013). However, a search of the Statistics New Zealand website reveals that only nine percent of rapes are registered by police. The U.S Department of State has reported that China had 31,833 rapes in 2007 (Marquez, 2009). This is twice as were recorded in the 2005 statistics (15000) (Marquez, 2009). The crime of rape is an enormous criminal problem in China.

There are different classifications of rape, including: war rape, gang rape, child rape and marital rape. Marital rape is one form of rape that largely goes unrecognised in many countries both at a legal and socio-cultural level since sex is often viewed to be an important basis of a marriage. Marital rape is also known as spousal rape, and it includes non-consensual sex committed by victim's partner or wife. Under international law, marital rape is considered to be more damaging than rape committed by a stranger (Abegunde, 2013).

However, there are significant differences around the world concerning the question of legalisation around marital rape as legislating in this area is viewed to be a strong threat to the traditional collective and patriarchal basis of the institution of marriage (Kohli, 2012). For example, in North and South America, in the whole of Europe, in South Africa, in Australia and New Zealand, marital rape is a crime. On the other hand, in many patriarchal societies

such as China, India, and many countries of North and Central Africa, and in the Middle Eastern Islamic countries, the act of marital rape is not criminalised

It is important to note that the phenomenon of criminalising marital rape is quite contemporary. In the past, most Western countries did not consider marital rape as a form of crime. For instance, in Europe and in the United States, following the Biblical teaching, husbands were exempted from the belief that they could commit rape against their wives. This was known in law as the 'marital exemption'.

Since the 1980s, major shifts in institutionalised patriarchal ideologies started taking place. The United States established Marital Rape laws in all its States from the early of 1990, State by State (Bergen, 2006). By 1993 all States in the USA had such laws. In England, the residual common-law rule that a man committed no offence by forcing sexual intercourse on his wife was abolished by the Court of Appeal in 1992 (Bergen, 2006). A decision that has made marital rapes an offence in all, rather than in exceptional, circumstances. New Zealand criminalised marital rape in the year 1985. All these countries have criminalised marital rape, but this only took place reasonably recently; however, this represents a victory for feminists' and symbolises a significant achievement in promoting increased public awareness in the area of women's personal autonomy over their bodies (Ross, 2015). In this context, China has a long way to go to challenge the patriarchal notions of wife being a husband's property.

Marital rape in China

I chose to discuss China's stance on marital rape because I was born there and grew up there. Until I moved to New Zealand to do studies in gender I was never able to question or think of marital rape as a form of crime. I believe this was because of gender socialization in a patriarchal society where married women's bodies are viewed as the property of their husbands. In China, there is no legislation that specifically outlaws marital rape; however, it might be viewed as a form of domestic violence under certain circumstances (Li, 2015). For example, a legal doctrine in the Chinese highest court in 2001 (Li, 2015) declared that husbands cannot be charged for raping their wives, unless the couple has previously filed for divorce (Criminal Division One of the Supreme People's Court, 2001). There remain problems of unclear guidelines for assessing evidence related to domestic violence, evaluation of intimidation, or allocating damages (Li, 2015). Even if a wife is forced to have sex unwillingly, this does not

break the law in China. In patriarchal societies the power to make decisions over almost everything, including sexuality and how it is exercised and legalized, belongs to men.

Reiterating the earlier stated argument, I will say that patriarchal culture and history of China have influenced its current legal processes. The framing of women's rights in China is largely under the control of male leaders. Earlier under the Chinese government and the Republic of China (1912-49), women were legally slaves, who were bought or sold under the guise of domestic servants (Smedley, 1976). However, in 1949 the Republic of China was overthrown by Mao Zedong, and the People's Republic of China was founded in the same year. In the middle month of 1950, the People's Republic of China established the New Marriage Law to stop the sale of women into slavery. The New Marriage Law also claim to raising the legal age of marriage to men 20s and women 18s. As a result, there was an important part women are no longer legally be sold and bought by landlords and men and women were officially declared to be equal (Noboro, 2010).

However, it is important to note that a majority of women in China are not only dependent on men for financial survival but also for their social acceptance. A woman without her husband is often viewed as promiscuous and too threatening for patriarchal structures for the society. Therefore, women often put up with different forms of abuse within their marital lives. For instance, a survey conducted by Tianjin Normal University in 2013 reported that 50% of Chines men have sexually or physically abused their partners, and 20% had forced their partner to have sex (Shanghaiist, 2013). These overwhelming figures explain the urgent need to have a law dealing with the marital rape problem.

In contemporary China, both socio-cultural norms and current legislation encourage women to not to report marital rape; instead it should be viewed as a family's private matter that needs to be confined within the four walls of the home. A wife is socially and legally expected to not to bring such 'family scandals' up in public as it will be a matter of shame for the whole affinal and maternal family on both the husband's and wife's side. This creates a vicious cycle of sexual abuse, for the victims of marital rape in China rather prefer to keep the 'secret' away from public eyes.

Marital rape is a form of legalised sexual slavery where the victims have no voice and no help. This makes it one of the most precarious forms of rape and the victims may not be able to recover as they continue to live with their perpetrators under the same roof. The offender is in a position to repeat the crime on a regular basis practising his power and control over the victim.

Conclusion

In this commentary, I have examined the reproduction of patriarchal ideology in China by not legalising marital rape as a form of crime, and wives as victims of sexual violence. I explored the fact that China has no legal protection and social recognition of the victimisation of marital rape victims. Even though marriage law is introduced the legal system in the area of domestic violence, there is still a lack of clear guidelines for assessing evidence connected to domestic violence, evaluating victimization, or allocating damages. Also, culture and history affect the development of the legal processes in China. On the other hand, other countries have laws prohibiting marital rape. In future, Chinese law and society must continue to work and improve the rights of those who have experienced marital rape, at the very least, to have the victims of rape recognized as having equal rights in the eyes of the law.

I now have a better understanding of gender based violence, women's oppression and subordination within patriarchal cultures, such as China. I am able to question these deeply ingrained gender scripts. A major shift and transformation of patriarchal ideology is indispensable to change women's subordinate position within Chinese society. This social change will aid in the framing of women friendly legislation.

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